

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 36651 & 36652

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 455
	)	
Plaintiff-Respondent,	)	Filed: May 10, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
KEVIN AMERY DIVINE, aka AMERY	)	THIS IS AN UNPUBLISHED
KAVIN DEVINE, aka DEVIN AMERY	)	OPINION AND SHALL NOT
GOODIN,	)	BE CITED AS AUTHORITY
	)	
Defendant-Appellant.	)	
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Judgment of convictions and consecutive unified sentences of ten years, with a minimum period of confinement of three years, for felony domestic violence and an indeterminate sentence of five years for intimidating, impeding, influencing, or preventing the attendance of a witness, affirmed; orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

In Docket No. 36652, Kevin Amery Divine, aka Amery Kavin Devine, Aka Devin Amery Goodin pled guilty to felony domestic violence. I.C. § 18-903, 18-918(2). In exchange for his guilty plea, additional charges were dismissed and the state agreed not to pursue an allegation that Divine was a persistent violator. The district court sentenced Divine to a unified term of ten years, with a minimum period of confinement of three years.

In Docket No. 36651, Divine pled guilty to intimidating, impeding, influencing, or preventing the attendance of a witness. I.C. §18-2604(3). In exchange for his guilty plea, an additional charge was dismissed. The district court sentenced Divine to an indeterminate term of five years, to run consecutive to his sentence for domestic violence. Divine filed I.C.R. 35 motions, which the district court denied. Divine appeals.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Divine's Rule 35 motions. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, we conclude no abuse of discretion has been shown.

Therefore, Divine's judgments of conviction and sentences, and the district court's orders denying Divine's Rule 35 motions, are affirmed.